

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (No. 03-07)

Subject

Initiative petition for a constitutional amendment from Husch & Eppenberger, LLC regarding Education and Health Care Protection – Version 3.
(Received December 11, 2003)

Date

December 31, 2003

Description

The initiative petition proposes to amend Article III of the Missouri Constitution by adding one new section, 38(d), to assure that there will not be spending reductions in the basic state investment in education and the basic state investment in health care during periods of economic downturns and lessened general revenues.

Within thirty-five days after this amendment is adopted and thereafter by September 15 of each fiscal year, the commissioner of administration shall determine whether the basic state resources per person for the just completed year are greater or less than the inflation adjusted basic state resources per person for the fiscal year ending June 30, 2001. If they are greater, the commissioner of administration shall certify to the director of revenue and the secretary of state that no fiscal emergency exists and any temporary additional sales and use taxes which are then in effect shall cease to be effective at the end of the day on December 31 following such determination. If they are less, a fiscal emergency shall be deemed to exist and the commissioner of administration shall determine the fiscal deficiency amount and shall issue a certification to the director of revenue.

Within thirty days after the issuance of the certification, the director of revenue shall determine the minimum sales and use tax rate to the nearest one-tenth of one cent, but not more than one cent, that would be needed to generate revenues covering the fiscal deficiency amount and shall issue a certification of such minimum sales and use tax rate.

The temporary additional sales and use taxes shall become effective at the end of the day on the first day of January and shall continue in effect until the end of the day on the following December 31. However, if this section is adopted after the primary election in calendar year 2004 the temporary additional sales and use taxes shall become effective at the beginning of the day on April 1, 2005, and shall continue until the end of the day on December 31, 2005.

The rate certified by the director of revenue shall stand imposed and levied without legislative action. When the commissioner of administration has certified that no fiscal

emergency exists, any temporary additional sales and use taxes then in effect shall stand repealed without legislative action on December 31 following the date of certification.

During January of 2005 or January of any year thereafter while any temporary additional sales and use taxes are in effect, the general assembly by legislative action taken prior to February 1 by a two-thirds vote of the members elected to each house, signified by the presiding officer of each house signing the legislative action in open session may determine and order that either the temporary additional sales and use taxes shall cease to be effective as of the end of the day on March 31st after such legislative action or the rate of the temporary additional sales and use tax shall be lowered to a specified lower tax rate to be effective at the beginning of the day on April 1 after the legislative action.

The revenues received by the state shall be deposited in the Education and Health Care Protection Trust Fund which would be created within the state treasury and used solely to fund authorized programs within the basic investment in education and health care. The revenues received shall not be diverted or used for any other purpose except for costs of collection and refunds.

The provisions of this Amendment are designed to ensure that economic downturns will not reduce the state's support for elementary and secondary education and health care services for the elderly and disabled and children and their parents and caregivers who are enrolled in the state's Medicaid program.

The general assembly shall appropriate annually and/or by supplemental appropriation from the Education and Health Care Protection Trust Fund sufficient monies to assure the authorized state programs encompassed within the basic state investment in education and basic state investment in health care are fully funded. Any monies shall be expended and shall not be subject to withholding or control of the rate of expenditure. Monies in the Education and Health Care Protection Trust Fund which are not appropriated and expended shall not lapse into general revenue.

The general assembly in making appropriations shall not divert revenues from or reduce the level of state funding from other revenue sources for education and health care which was in effect for the just completed year because of the funds in the Education and Health Care Protection Fund. If appropriations made for the fiscal year this Amendment becomes effective divert from or reduce the level of state funding from other revenue sources for such authorized programs; if such appropriations were adopted during the just completed year prior to the effective date of this Amendment; and if such diversions or reductions in the level of state funding for such authorized programs by appropriations were not disproportionate to the diversions or reduction in the level of state funding for all other state programs which were made for the same period, then funds from the Education and Health Care Protection Fund may be appropriated for the fiscal year this Amendment becomes effective to restore the diversions or reductions made by appropriations in the level of state funding from the other revenue sources for such authorized programs.

The commissioner of administration shall establish the books to account for revenues received and for funds appropriated and expended. The state auditor shall provide an annual audit as a result of taxes which become effective pursuant to this Amendment. The state auditor or any taxpayer may bring an action in the circuit court of Cole County against the commissioner of administration and/or the director of revenue to determine whether the certification or determination made is unlawful because it is arbitrary, capricious, and abuse of discretion or not authorized by law.

Any temporary additional sales and use taxes shall not be a part of total state revenues and shall not be an expense of the state government. The provision of this amendment shall terminate at the end of the day on December 31, 2010, unless a majority of the voters cast for the ballot question at the general election in 2010 for the Education and Health Care Protect Amendment to continue.

Assumptions

This initiative petition requires the commissioner of administration to annually determine and certify if the state has a fiscal emergency. If a fiscal emergency does exist, the director of revenue will determine the temporary increase in sales and use tax (up to one cent) needed to generate revenues covering the fiscal deficiency amount for the basic state investment in education and the basic state investment in health care. The general assembly has the option to lower the temporary sales and use tax with a two-thirds vote of each house if action is taken by February 1. Revenues raised are dedicated for elementary and secondary education and health care services for the elderly and disabled and children and their parents and caregivers who are enrolled in the state's Medicaid program. The amendment will terminate on December 31, 2010, unless the voters approve a continuation.

The Department of Revenue did not provide an estimate of additional sales tax revenue but instead agreed to have the Office of Administration – Division of Budget and Planning provide that information. Based on the information from the Office of Administration – Division of Budget and Planning, the Amendment mandates that a sales and use tax of up to one cent be imposed if the conditions for a "fiscal emergency" are met. The following chart provides an estimate of what an additional one cent and one-tenth of a cent general revenue sales tax would yield in Fiscal Years 2004 – 2007, based upon the following assumptions made by the Office of Administration:

1. The current general revenue sales tax rate is three cents, which is used to estimate the revenue from an additional one cent sales tax.
2. Each fiscal year shown is a full year amount.
3. The Fiscal Year 2004 estimate is based on the Governor's revised July 2003 general revenue estimate.
4. Sales tax growth in Fiscal Year 2005 and beyond is assumed to be 2.5%.

Fiscal Year		General Revenue Sales Tax (millions)	Gross Revenue From a One Cent Increase	Gross Revenue From a One-Tenth of a Cent Increase
2003	Actual	\$1,799.3		
2004*	Estimate	\$1,826.6	\$608.9	\$60.89
2005**	Estimate	\$1,872.3	\$624.1	\$62.41
2006	Estimate	\$1,919.1	\$639.7	\$63.97
2007	Estimate	\$1,967.0	\$655.7	\$65.57

* Although the first year the tax could go into effect is FY 2005, the FYs 2003-2004 are provided for informational purposes.

** The maximum time the tax could be in effect for FY 2005 is six months, but the full year amount is shown for informational purposes.

Fiscal Year	Gross Revenue From a One Cent Increase (millions)	Estimated Refunds***	Net Revenue From a One Cent Increase	Net Revenue From a One-Tenth of a Cent Increase
2004	\$608.9	\$21.7	\$587.2	\$58.72
2005	\$624.1	\$21.7	\$602.4	\$60.24
2006	\$639.7	\$23.3	\$616.4	\$61.64
2007	\$655.7	\$23.3	\$632.4	\$63.24

*** OA Budget and Planning estimated amount of refunds related to an additional one cent sales and use tax.

As stated in the initiative petition, revenues received by the state as a result of this Amendment will not be used for any other purposes except for costs of collection and refunds. Past audits by the State Auditor's Office have reported that state law does not require vendors to return sales and use tax refunds and related interest to the original purchaser when applicable.

The total annual costs would be approximately \$104,000 (Department of Revenue \$69,000 and State Auditor's Office \$35,000). The Secretary of State's Office indicated they would anticipate a cost but the amount is unknown.

Officials from the Department of Revenue indicate the Constitutional amendment will have an administrative impact to the department. Funding would be needed for the notification of 150,000 businesses each year at an approximate cost of \$40,200 per year. If the rate is increased in January and then decreased in April, this amount and number of

mailings would double. In addition to the notification mailing costs, new sales tax vouchers would need to be printed and mailed at a cost of \$20,263 (printing cost) and \$8,510 (average mailing cost). The total cost for the Department of Revenue would be approximately \$69,000 ($\$40,200 + \$20,263 + \$8,510 = \$68,973$). In addition, temporary additional sales and use taxes would become effective at the end of the day on the first day of January causing taxpayers to be responsible for the collection and remittance of two different tax rates for the month of January. Officials also indicated that any costs associated with this proposal will only be required if the Commissioner of Administration declares a fiscal emergency exists, or a subsequent decrease in the sales tax rate if the Commissioner of Administration declares a fiscal emergency no longer exists. If there is no fiscal emergency, there would be no increase or decrease in the sales tax rate, and therefore, would be no fiscal impact to the Department. Since it is unknown as to whether there will be an increase and a decrease in the sales tax rate, the costs associated with this proposal may be unknown as well.

Officials from the Secretary of State's Office indicate the Constitutional amendment proposed in this initiative petition could ultimately cause affected state agencies to promulgate rules. These rules would be published in the Missouri Register and the Code of State Regulations. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Revenue could require as many as 28 pages in the Code of State Regulations. For any given rule, roughly half again as many pages are published in the Missouri Register as in the Code because cost statements, fiscal notes and the like are not repeated in the Code. These costs are estimated. The estimated cost of a page in the Missouri Register is \$23.00. The estimated cost of a page in the Code of State Regulations is \$27.00. The actual cost could be more or less than the numbers given. The impact of the Constitutional amendment in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded or withdrawn.

The State Auditor's Office would be required to perform an annual audit of the Education and Health Care Protection Fund if the commissioner of administration declares a fiscal emergency. This audit requirement would require additional audit resources. It is estimated that this audit requirement would require 1,000 staff hours and 150 manager hours to complete. This audit would cost approximately \$35,000.

Officials from the Office of Administration – Budget and Planning assume the Amendment would require the commissioner of administration to perform some of the calculations that the Amendment requires. These calculations pertain to normal budget and financial matters. Thus, there would be no explicit additional costs imposed on the Office of Administration. Office of Administration – Budget and Planning indicated the Amendment should not result in additional costs or savings to the Governor's office. Officials from Department of Social Services – Division of Medical Services (DMS) indicated there will be no fiscal impact. Officials from the Department of Elementary and Secondary Education assume the proposal will have no impact on the Department.

Public comments and other input

The State Auditor's Office used the responses in the assumption section from a previous initiative petition relating to the Education and Health Care Protection Amendment, because the initiative petitions were very similar. Responses received were provided by the Department of Elementary and Secondary Education, the Department of Revenue, the Department of Social Services, the Office of Administration – Budget and Planning, and the Secretary of State's Office. Bradley J. Ketcher representing The Policy Group, Inc submitted comments as a proponent of the initiative petition.

Fiscal Note Summary

The constitutional amendment could generate net sales and use tax revenues only if the conditions for a fiscal emergency exist. The range of sales and use tax generated is dependent on the level of fiscal emergency, as determined by the drop in revenue. The indirect fiscal impact on state and local governments, if any, is unknown.